

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VINCENT BERRY,

Plaintiff,

v

**CENTRAL MICHIGAN UNIVERSITY,
CENTRAL MICHIGAN UNIVERSITY
MEDICAL SCHOOL, MARK DESANTIS,
MARIE C. MATTE, BRIAN SLENSKI,
TINA THOMPSON, LINDA PERKOWSKI,
DANIEL GRIFFIN, MARC SPENCER, JAMIE
ALAN, ROBERT PETERSON, JULLIEN
ROSSIGNOL, SANDRA HOWELL, and
GEORGE KIKANO,**

Defendants.

Case No. 2:19-cv-10306-TGB-SDD

Hon. Terrence G. Berg
Magistrate Judge Stephanie Dawkins Davis

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**DEFENDANTS' MOTION TO HAVE CASE REASSIGNED
TO THE NORTHERN DIVISION**

NOW COMES Defendant Central Michigan University Board of Trustees, by and through its attorneys Fraser Trebilcock Davis & Dunlap, P.C., and for its Motion to Have Case Reassigned to the Northern Division states as follows:

1. Pursuant to E.D. Mich. L.R. §83.10(b), cases shall be assigned by the Clerk to a place of holding court by reference to the counties as stated in E.D. Mich. L.R. §83.10(a) in the following order of priority:

- If an action is removed from State Court, the county in which the case was pending in State Court (28 U.S.C. §1441(a)).
- If an action is local in nature, the county in which the real estate is located.
- The county in which a plaintiff resides.
- The county in which the claim arose.
- In a case in which a defendant is an officer or employee of the United States, the count in which office of the defendant is located.
- A county in which a defendant resides or has a place of business.

2. In the case at bar, the first two factors as stated in E.D. Mich. L.R. §83.10(b) do not apply. In addition, the Complaint in the case at bar does not contain any allegation stating the county in which the Plaintiff resides; accordingly, that factor does not apply either.

3. Consequently, to determine which division in the Eastern District of Michigan should have been assigned this case, based on a review of the Complaint, it is necessary to consider "[t]he county in which the claim arose." E.D. Mich. L.R. §83.10(b)(4). According to the allegations in the Complaint, the county in which "the claim arose" is Isabella County, because all of the allegations relate to the time

that Plaintiff was enrolled in the Central Michigan University College of Medicine, which is located in Mt. Pleasant, Michigan. Mt. Pleasant, Michigan, is in Isabella County.

4. Pursuant to E.D. Mich. L.R. §83.10(a)(2), Isabella County is among the counties listed that indicate the "place of holding court" is Bay City, which is the Northern Division of the United States District Court for the Eastern District of Michigan. This case was assigned to the Southern Division apparently because the case was filed in the Southern Division. However, the allegations in the Complaint, taken together with E.D. Mich. L.R. §83.10(a), indicate that the case should be assigned to the Northern Division.

5. After notice and hearing, or upon consent of the parties, the Chief Judge may order a civil case to be reassigned with the consent of the Judge to whom the case will be reassigned and with the consent of the Judge with whom the case was originally assigned. E.D. Mich. L.R. §83.11(b)(2).

6. Defendants, through their undersigned attorney, conferred, primarily through e-mail on April 25, 2019 with Plaintiff's attorney to seek concurrence from Plaintiff's attorney in this motion as required by E.D. Mich L.R. 7.1(a). However, after Defendants' attorney explained the nature of its motion, its legal basis and the relief sought, concurrence was denied. Plaintiff's lawyer did state, however, that

Plaintiff is willing to file an amended complaint to state that Plaintiff resides in Wayne County, which is in the Southern Division.

WHEREFORE, Defendant Central Michigan University Board of Trustees respectfully requests that this Honorable Court GRANT its Motion to Have Case Reassigned to the Northern Division and enter an order that reassigns this case to the Northern Division of the United States District Court for the Eastern District of Michigan.

Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.
Attorneys for Defendants

Dated: May 16, 2019

By: /s/ Michael E. Cavanaugh

Michael E. Cavanaugh (P11744)

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2019, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Cyril Hall served electronically.

/s/ Michael E. Cavanaugh

Michael E. Cavanaugh (P11744)



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**BRIEF IN SUPPORT OF DEFENDANT CMU'S MOTION TO HAVE
CASE REASSIGNED TO THE NORTHERN DIVISION**

Reassignment of this case to the Northern Division is consistent with E.D. Mich. L.R. §83.10(b). The rule is designed to allow the Clerk to easily identify the place of holding court based on a review of the Complaint. In this case, the first factor listed in E.D. Mich. L.R. §83.10(b) that can be identified based on a review

of the Complaint is "[t]he county in which the claim arose." E.D. Mich. L.R. §83.10(b)(4). According to the Complaint, the county in which "the claim arose" is Isabella County, because all of the allegations relate to the time that Plaintiff was enrolled in the Central Michigan University College of Medicine, which is located in Mt. Pleasant, Michigan. (Doc. 1, PageID#6, ¶22).

Furthermore, the policy underlying using the county in which the claim arose to determine the place to hold court makes good sense. The Complaint alleges that CMU is located in Mt. Pleasant, Isabella County and that all individual Defendants were "at all relevant times" employed by CMU. (Doc. 1, PageID#3-5, ¶¶6-17) Consequently, it is reasonable to expect that any documents related to this lawsuit will be physically located in Isabella County. Isabella County is among the counties listed that indicate the "place of holding court" is Bay City, which is the Northern Division of the United States District Court for the Eastern District of Michigan. E.D. Mich. L.R. §83.10(a)(2),

In short, the local rules provide a straight-forward procedure by which the Clerk can determine the place of holding court based on the allegations in the Complaint. The policy behind the rule helps ensure that the place of holding court is geographically located in close proximity to a county that has a substantial connection to the dispute – in this case the county in which the claim arose. For

reasons of efficiency, and for the policy reasons that underlie E.D. Mich. L.R. §83.10, the case should be reassigned to the Northern Division.

CONCLUSION

For the foregoing reasons, Defendant Central Michigan University Board of Trustees respectfully requests that this Honorable Court GRANT its Motion to Have Case Reassigned to the Northern Division and enter an order that reassigns this case to the Northern Division of the United States District Court for the Eastern District of Michigan.

Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.
Attorneys for Defendants

Dated: May 16, 2019

By: /s/ Michael E. Cavanaugh

Michael E. Cavanaugh (P11744)

Ryan K. Kauffman (P65357)

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I hereby certify that on May 16, 2019, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Cyril Hall served electronically.

/s/ Michael E. Cavanaugh

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